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Jeffrey Blustein^a

^a Assistant Professor of Philosophy, Mercy College

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On the Doctrine of *Parens Patriae*: Fiduciary Obligations and State Power

JEFFREY BLUSTEIN

In this paper, I shall explore the philosophical foundations of the venerable but little discussed doctrine of *parens patriae*. More specifically, I am interested in the way in which this doctrine conceives of the three-way relationship among the child, the parent, and the state, and in the scope of state control over parent-child relations that the doctrine may be taken to justify. I shall argue that while society has a legitimate interest in the upbringing of its children, the doctrine's central underlying thesis—that parents are merely the agents of the society in the area of childrearing¹—rests on untenable principles of political morality and has implications that are profoundly anti-liberal. At the

same time, it is important to note that the doctrine of *parens patriae* represents a particular conception of parenthood as a fiduciary or trust-like relationship, and that the application of the fiduciary *concept* to parenthood may provide the rudiments of an acceptable theory of parenthood even though this particular *conception* ultimately turns out to be indefensible. For this reason, I shall divide my discussion into two parts, beginning with an examination of what can and cannot be attributed to fiduciary relationships as such, and then moving on to consider the specific claim that parents are granted fiduciary powers over their children by the state.

History of the Doctrine

The origin of the doctrine of *parens patriae*² in the law can be traced to medieval and late medieval English chancery courts, where it played an important role in maintaining the structure of feudalism. Chancery, as an agent of the monarchy, had a duty to assure the orderly transfer of feudal duties from one generation to another and to insure that there would be someone available to perform these duties, and the concept of *parens patriae* was usually invoked in connection with

problems of property or guardianship. Later, in response to the social and economic changes of the declining feudal age, statutes dealing with the custody of children by the poor were enacted, and the doctrine of *parens patriae* was used to justify involuntary separation of children from pauper parents and subsequent apprenticeship to others.³

Similar provisions were common in the poor laws of the American colonies. In some of the colonial statutes, we can see the beginnings of the idea that children are to be protected not only from poverty but also from parents who are undeserving—who, for example, do not provide their children with “good breeding,” or neglect their formal education, or do not

Jeffrey Blustein, author of *Parents and Children: The Ethics of the Family*, is Assistant Professor of Philosophy at Mercy College.

teach them a trade, or are idle, dissolute, unchristian, or "uncapable." The concept of *parens patriae*, first used in chancery where protection of feudal relationships and property were the major concerns and later transplanted into a branch of the poor law, eventually came to suggest a general power or right of the

put into better hands; but where they are incompetent or corrupt, what is there to prevent the public from withdrawing their faculties, held, as they obviously are, at its sufferance? The right of parental control is a natural, but not an unalienable one.⁵

Here the defeasibility of the trust to parents is justified on the ground that childrearing affects interests beyond those of the parents and children and that the state, as guardian of the social welfare, may, and perhaps must, intrude into family affairs when necessary to protect important social interests. *Crouse* thus adopted the doctrine of *parens patriae* not simply as a protective device for children against their parents. For the court in *Crouse*, the harmful consequences for the society at large of parental incompetence or unworthiness to rear children justify state intervention under *parens patriae*.⁶

In the trust referred to by Lord Redesdale, the settlor, or creator of the trust, is the state, the trustee is presumably the child's natural parents, and the beneficiary of the trust, or *cestui que trust*, is the minor child. *Trust* in this context does not of course have its modern technical meaning of a trust of property, but in the early nineteenth century, before the development of the modern law of trusts, many matters of confidence were called *trusts*, whether or not there was any strict trust of property. A was said to have confidence reposed in him by B where B had entrusted A with property to hold and to deal with on behalf of himself or others, and also where A had in some way undertaken to become B's agent. Outside the law, it is common

The fiduciary relationship does not rule out the satisfaction of interests that parents have as individuals.

usage to speak of a person entering some employment or taking up an appointment, whether public or private, as undertaking or accepting a *trust*. To avoid possible misunderstanding, however, it is perhaps best to use the word *fiduciary* to refer to the kind of relationship discussed in the theory of *parens patriae*, a relationship which is in some respects trustlike, but is not, strictly speaking, a trust.

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state to intervene in intrafamily affairs on behalf of the child or society and to separate children from their parents.

The main elements of the doctrine were articulated in the famous nineteenth-century English custody case of *Wellesley v. Wellesley*⁴ in which the petition of a father against his deceased wife's sisters for custody of his minor children was denied on grounds that he was living in adultery and thus set a poor moral example for his children. In his opinion, Lord Redesdale maintained that parents have rights to their children only as a privilege granted by the state, that the state delegates control over children to their parents as a trust, and that it does so because parents usually discharge this trust faithfully on behalf of their children. When this trust is not faithfully discharged, as when the parent is cruel or fails to maintain his child, the state has the right to revoke the trust and to intervene on the child's behalf.

As interpreted by most courts on this side of the Atlantic, the theory of *parens patriae* holds that parents' rights emanate from the state and are capable of being annulled by it under certain circumstances in order to protect the welfare of the child. In some cases, however, a different rationale for state intervention is presented. "It is to be remembered," the court in *Ex parte Crouse* argued,

that the public has a paramount interest in the virtue and knowledge of its members, and that of strict right, the business of education belongs to it. That parents are ordinarily intrusted with it is because it can seldom be

The Nature of Fiduciary Relationships

A number of features of fiduciary relationships must be examined to appreciate fully the implications of applying the fiduciary concept to parenting.⁷ In a trust, the persons by whom the title to property is held—the trustees—are obligated to deal with the property for the benefit, not of the trustees, but of the beneficiaries. The trustee, however, may himself be one of the beneficiaries. Similarly, in the fiduciary relationship between parents and the state, those who have custody of children are obligated to deal with them in such a way that the benefits of caretaking accrue to others, either to the children themselves or, as in *Ex parte Crouse*, to society at large. This is not to say, of course, that parents may not also benefit from the care and nurture of their children. On the contrary, they typically enjoy the affection and companionship of their children and derive pleasure and a feeling of pride from seeing them grow and prosper and from the realization that they (the parents) played a major role in their becoming responsible adults.

Although parents may be entrusted by the state with the task of caring for and protecting the well-being of their children, it does not follow that parents may not take their own interests into account in deciding and acting on behalf of their children. The fiduciary relationship does not rule out the satisfaction of interests that parents have as individuals, nor does it require them to deny themselves these interests for the sake of the interests of their children or of society, as these interests have been antecedently defined by the state. To explain this point more fully, note the distinction in the law between instrumental and discretionary trusts. In both cases, the trustee has positive duties to perform, but in the former he is a mere instrument and his duties are such that anyone of normal competence could be expected to discharge them satisfactorily, while in the latter, he is called upon to exercise personal choice as to the manner in which the wishes of the settlor are to be carried out. The independence granted to the trustee allows his own interests to influence the execution of the trust, although, of course, his actions are still constrained by the general objectives of the trust. The trustee who must use discretion and distribute benefits as he considers most suitable may to some extent act so as to promote outcomes that

are his personal goals or objectives. Similarly, if the fiduciary relationship between parents and the state is analogous to a discretionary trust, then, within certain limits, parents are free to raise their children according to their own personal preferences.

The theory of *parens patriae* restricts parental autonomy in two ways. First, it stipulates that parents may not pursue their own self-regarding interests at the expense of, or in disregard of, the interests of their children.⁸ Second, under this doctrine parents' objections to the standards of childrearing imposed on them by the state carry no moral weight as *parental* objections. Parents may legitimately criticize these standards, as anyone may, on the ground that they are not good for society as a whole, but they may not criticize these standards on the grounds that the parents are a specific child's parents, that they know what is best for their own child, and that they believe some other goals are more appropriate in their child's particular case. Since the theory of *parens patriae* regards parental au-

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thority over children as derived from the state, parents have no right, simply as parents, to define their own standards of childrearing and to demand that the state confine its requirements to minimal standards of care and education. The state might adopt minimal standards or maximal ones, but parental rights are merely creatures of the state, and individual parents have no independent source of authority on the basis of which to challenge the judgment of the state as regards the proper direction for parenting.

An important feature of the fiduciary relationship

involving parents, children, and the state, and one that is independent of the *parens patriae* theory of the origin of parental rights, is that the rights of parents are tools given to them for the fulfillment of their duties. Just as "the rights and obligations of the trustee will vary according to only one thing, his mission,"⁹ so too the rights and obligations of parents, to the extent that parenting is analogous to a trust, will depend solely on their mission.

But who or what determines what the parents' mission is? According to the doctrine of *parens patriae*, it is the state. Alternatively, we might consider the parents' mission to be self-imposed, their duties to be determined by their self-imposed mission, and their rights to be contingent on these duties. A parent, for example, might dedicate herself to the end of raising her child to become a good Christian, provide him with a Christian education out of a sense of duty, and defend her right to educate him in this way on the ground that it is necessary for the fulfillment of her duty. As a general thesis, however, this view of parental rights and duties as self-imposed is fundamentally mistaken, for while *parenthood* with its attendant duties

by the state remains to be seen. In any case, it is well to remember that we are only speaking here about parenting as a kind of fiduciary relationship, and that parenting is certainly much else besides. The parent-child relationship is also a relationship between persons as such, governed by general moral norms about respect for persons, beneficence, nonmaleficence, and the like. These norms generate rights and duties quite independently of the fiduciary character of parenthood, rights which are not merely tools for the fulfillment of corresponding duties.

If parents are parties to a trustlike relationship, is there any room in this conception for the notion of *children's* rights? Or are we compelled to regard the benefits that parents confer upon their children as mere gifts or favors that children are in no position to demand? The belief that children themselves have no rights under the trusteeship model perhaps stems from the assumption that trusts are a type of contract. It is, however, a well-established principle in the law that trusts may be enforced by a beneficiary who is not a party to it, while only the actual parties to a contract can normally sue upon it.¹¹ The moral analogue of this principle is based on the following considerations. If A and B contract with one another to the effect that A will provide some benefit to C in consideration of something that B does for A, then as a rule C cannot validly insist that A perform his part of the bargain. A's failure to provide C with the promised benefit may disappoint C's expectations and may even harm him, but C is not in the strict sense *wronged* because, not having been a party to the original contract, C has no rights against A. The one who, properly speaking, has been wronged is B, and it is only he who can legitimately claim the performance of A's duties as his due.

There is, however, an important exception to this rule. Suppose B contracts with an insurance company and names C as his intended beneficiary. C, it seems, has a right to the accumulated funds after B's death, even though the insurance company made no promise to C. The explanation for this, I submit, is that one of the contracting parties, the insurance company, is also a trustee of benefits for C, and it is because of the existence of a trust, not simply because there is a contract, that the contractual rights in favor of C may be enforced by him. C's right to the proceeds of B's insurance policy is not created by the insurance company's promise but by B's naming C as his intended beneficiary.

In this case, the trust is merely a convenient device

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may be voluntarily undertaken, *duties* are undertaken that attach to the role of parent in the organization of the family and are not solely dependent on private parental decision.¹⁰ Indeed, it is not uncommon for parents to act out of deep moral conviction about their parental mission and yet be mistaken about what their duty really is, and it is clear that objectively valid moral judgments about the treatment of children are not always reflected in the autonomous judgments of parents.

Parental rights and duties must, therefore, be grounded in something other than just the self-imposed mission of parents, but whether this is most plausibly thought of as the mission imposed on them

for distributing funds in accordance with a right C possesses which is independent of the contractual arrangement. When A and B contract with one another that A shall provide some benefit to C which C has an

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independent right to, then A is being *entrusted* by B with the task of meeting C's valid claim. Normally, however, contracts do not involve this trusteeship element. Rules defining the ways in which valid contracts are made provide individuals with facilities for realizing their wishes by conferring powers upon them to create structures of rights and duties, and usually the only rights involved in a contractual arrangement are those that have been so created. Under these circumstances, the only person wronged by a breach of contract is one who was actually a party to the contract.¹²

Having explored some of the features of fiduciary relationships, we can now draw upon our convictions about parenting to test the adequacy of the fiduciary concept of parenthood. First, parental discretion in the management of childrearing is desirable, we believe, because children have their own individual needs and require individualized attention. This discretion is also desirable because when parents have some independence to raise their children as they judge best, the parents derive more satisfaction from parenting and as a result give their children better care. And finally, it is also valuable because intimacy in family life can flourish only when parents have some autonomous control over the character of their relationship with their children. From this it follows not that the trust concept is inappropriate to parenting, but only that if we are to use the concept in this connection, we should think along the lines of a discretionary, rather than an instrumental, trust.

Second, interference with another person's liberty of action is always morally suspect and in need of justification, and therefore the burden of proof falls upon those who advocate parental paternalism to show why interference with children's liberty is morally prefer-

able to noninterference. Clearly, paternalism cannot be justified on the ground that it serves the interests of parents; the argument must be that children are the primary beneficiaries. One way to express this might be to say that parents are, first and foremost, responsible for the safety and well-being of their children, and that the rights they have over their children are such as are entailed by their responsibilities. The grounding of rights on duties is also, as we have seen, an essential element of fiduciary relationships.

On further reflection, however, it seems that this view of the relationship between parental rights and parental duties is too restrictive, and that it does not completely conform to our convictions about permissible parental interference with the choices and actions of children. A great deal of parental interference designed to secure goals in the realms of the political, the religious, or the sexual cannot plausibly be justified by appealing to the fact that such interference is necessary to discharge duties that parents in general have. Nevertheless, we believe that such interference is legitimate as long as it does not produce results that conflict with the ends dictated by these broader duties.

We thus have to amend the simple formula for fiduciary relationships: Parents' rights are either (a) tools for the fulfillment of their duties (in other words, the duties *ground* the rights) or (b) freedoms to do things that are compatible with the fulfillment of these duties (in other words, the duties *limit* the rights). Corresponding to this distinction are two senses in which parents may consult their own interests in connection with childrearing: They may take account of

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their own interests in the course of discharging their responsibilities (that is, they have a certain amount of discretion in determining how they shall carry out their responsibilities), or they may take account of interests that are not directly linked to the performance of their responsibilities but that are capable of being satisfied consistently with these responsibilities.

Third, since a beneficiary's not being a party to a trust does not bar him from having rights against the trustee that the ends for which the trust was created be faithfully discharged by the trustee, the fiduciary conception of parenthood does not require a revision of our deeply entrenched practice of ascribing rights to children.

While the doctrine of *parens patriae* is able to accommodate these key ideas about the parent-child relation—that close supervision of parents is counter-

productive, that parenting is first a job to which specific duties are attached, and that children themselves are wronged if their parents fail to do what is necessary to fulfill their duties or do things that contravene their duties¹³—other features of the doctrine are less commendable. I have already discussed one of these—the overly rigid view of the relationship between parents' rights and duties. I now turn to an examination of others.

Criticism of the Doctrine

The excerpt from *Ex parte Crouse* quoted previously appears to contain a contradiction. It asserts that "the right of parental control is a natural, but not an unalienable one." (I take it that what the court means by an *unalienable* right is an *indefeasible* right—that is, a right that cannot be taken away from its possessor by others). However, the argument for the thesis that the right of parental control can be canceled or withdrawn by the state is that authority is delegated to parents by the state and commands are given by parents in its name, and this would seem to suggest that the right of parental control over children is conventional rather than natural. As I have construed the theory of *parens patriae*, it conflicts with the oft-expressed notion that parental rights are natural, and it might be thought that the theory can be attacked on this basis.

I do not believe that this approach is advisable. Procreation, it is true, can occur without any state, and perhaps in a state of nature procreators ought to have control over their children because no one else is likely to care enough to want it, and children will suffer or die if they are abandoned by their natural parents. Here we might say that procreation carries with it the right of control over children, and to this extent the right may be called a natural one.¹⁴ But when procreation takes place within a civil society, where other forms of control that are not biologically based are available, it is not obvious that the only morally justifiable scheme for assigning control over children is the one that assigns it to their natural parents. Appeals to the natural rights of parents are replaced by arguments about the moral justifiability of alternative systems of childrearing, and even if we persist in talking about

the natural rights of parents, the evaluation of childrearing institutions and of the role of parents within them is appreciably more complex than just determining whether these rights are respected by them.

This might sound like a defense of the *parens patriae* theory, but in fact there is an enormous difference between saying that parents' rights must be viewed in the context of a set of rights and interests composing a social system of childrearing and saying that these rights are created by society or the state. The claim that

Parents' rights are either tools for the fulfillment of their duties or freedoms to do things that are compatible with the fulfillment of these duties.

parents, by having children, commit themselves to act *in loco societatis* toward their children and that the state thus has the authority to remove a child from his parents if they do not, or cannot, provide an upbringing which is acceptable to society, is seriously inadequate as a theory of the moral basis of parenthood. To assume, as this position seems to do, that the community is entitled to follow its own lights regardless of the merits of the view it has reached consensus on, and to suppose further that the state is obligated to follow this consensus because in a democracy the state must abide by the will of the bulk of the community, is to mis-

understand fundamentally the meaning of democratic principle and to allow the community to impose requirements on parents that may have no justification

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apart from the fact that this is just what the members of the community happen to desire.

The *parens patriae* doctrine, in short, cannot accommodate the necessary discriminatory judgments and therefore accords the community too broad a scope in defining the ends of childrearing and delimiting parental rights. The state is constrained to do what is acceptable to society; however, aside from this there is no limit to the state's authority to intervene in parent-child relations.¹⁵

That there is such a limit must be acknowledged by anyone who adopts a liberal social and political philosophy. In a liberal society, to quote John Rawls, "the plans of life of individuals are different in the sense that these plans give prominence to different aims, and persons are left free to determine their good, the views of others being counted as merely advisory."¹⁶ The state may—indeed must—see to it that children receive some level of care and education, for without some care and education children would not in any meaningful sense acquire the ability to pursue their own conceptions of the good. To justify any more extensive interference on behalf of children, the liberal must be prepared to argue that children should not be taught certain doctrines or be conditioned to act in certain ways even though such instruction and conditioning do not interfere with the care and education that anyone must receive if he is to be able to pursue effectively his own conception of the good. A state which invokes the doctrine of *parens patriae* and interferes on such grounds is not, however, a liberal state, for it makes judgments about the value of ends and does not leave persons free to determine their good.¹⁷

The liberal's views about legitimate parental authority are different from his views about legitimate state authority. The liberal believes that parents have the right to make judgments about the good life for their children and, within limits, to raise their children so that they come to believe and act in ways that the parents deem intrinsically valuable. The doctrine of *parens patriae*, by contrast, posits no such distinction between legitimate parental and political authority. That parents should be allowed to do things that the state should not be allowed to do might be defended in the following way: Individuals have the right to determine for themselves the course of their lives, and because the kind of life a child leads is importantly constitutive of the parents' self-conception and of their sense of their own identity, this right encompasses the right of parents to make judgments about the good life for their children and to act on these judgments. But this argument is inconclusive, for if parents did not live in a society where they normally raise their children according to their own conceptions of the good life, then it is far from obvious that the kind of life their children lead would be importantly constitutive of the

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parents' self-conceptions. The argument would be much stronger if it could be shown that the state's intervention in parent-child relations to impose its own conception of the good life for children jeopardizes the nonparental rights of parents as individuals. Here the right of parents to make and act on ends-judgments for their children would not be *included* in their autonomy rights, but would *follow from* them as a necessary condition of these rights being protected.

We might also defend the liberal distinction between the legitimate uses of parental and political authority by concentrating on the effects upon society of the virtually unlimited authority granted to the state under *parens patriae*. If political, religious, and other diversity in society is a positive value—as Mill for one most

emphatically argued—then the sources of such diversity, other things being equal, should be protected. Among these sources, family upbringing certainly occupies a prominent place, and were the state to de-

cide which beliefs and values parents may, and which they may not, transmit to their children, it would undermine the pluralist system to which liberalism is committed.

NOTES

1 The doctrine has not always been understood in exactly this way by those who employ it, but crucial differences between its various elaborations have not been sufficiently remarked on and are frequently blurred. Sometimes the state is said to act *in loco parentis* when it intervenes in parent-child relationships; sometimes the state intervention is based on the idea that parents act *in loco societatis* to begin with. The latter thesis is the one that particularly interests me in this paper, although I shall comment indirectly on a possible defense of the former thesis as well. Further, while I do not wish to deny that, as a matter of fact, courts and legislatures have used the doctrine of *parens patriae* to bring about many improvements in the condition of children, I shall not try to defend the doctrine on this basis.

2 On the legal history of the doctrine of *parens patriae*, see Neil Howard Cogan, "Juvenile Law before and after the Entrance of *Parens Patriae*," *S. Car. L. Rev.* 22 (1970): 147-181; Andrew Jay Kleinfeld, "The Balance of Power Among Infants, Their Parents, and the State," *Family Law Quarterly* 5 (1971): 64-107; Douglas Rendelman, "*Parens Patriae*: From Chancery to the Juvenile Court," in *Juvenile Justice Philosophy*, ed. by F. Faust and P. Brantingham (St. Paul: West Publishing Co., 1979), pp. 58-96.

3 According to George B. Curtis, "in their headlong rush to embrace the doctrine of *parens patriae* as the justification for the juvenile court movement," reformers of the nineteenth and twentieth centuries "seemed to miss completely the subtle, yet crucial, fact that the doctrine embraced the dependent and not the delinquent child." See Curtis, "The Checkered Career of *Parens Patriae*: The State as Parent or Tyrant?" *DePaul L. Rev.* 25 (1976): 898-99.

4 4 Eng. Rep. 1078 (H.L. 1828).

5 4 Whart. 9, at 11 (Pa. 1839).

6 See also *In re Ferrier*, 103 Ill. 387 (1882); *State v. Bailey*, 157 Ind. 324 (1901). Today, many lower and family courts, as well as officials involved in various aspects of the juvenile justice system, still reiterate the doctrine of *parens patriae* uncritically.

7 See Comment, "Rights of Children: A Trust Model," *Fordham L. Rev.* 46 (1978): 670-780. This excellent article advocates using a trust model as a conceptual analogy in redefining the child's legal relationship with adults and the state.

8 "Rights of Children: A Trust Model" refers to "the standard of care and loyalty imposed upon those in fiduciary relationships" and suggests that "a court asked to redefine the duties of parents or the state might well look to the duty of loyalty imposed by the law of trusts for a conceptual analogue." *Ibid.*, 673.

9 Pierre Lapaulle, "An Outsider's View Point of the Nature of Trusts," *Cornell L. Quarterly* 14 (1928): 52-61.

10 For elaboration of this point, see my articles, "On Children and Proxy Consent," *Journal of Medical Ethics* 4 (1978): 138-140; "On the Duties of Parents and Children," *The Southern Journal of Philosophy* 15 (1977): 427-441. These papers deal with two issues that arise in connection with parental duties. The first formulates a principle of parental responsibility that employs a distinction between primary goods and other goods made by John Rawls in *A Theory of Justice*. Parents are said to be responsible for securing, where possible, primary goods for their children. The second examines how the allocation of responsibility for raising children, and thus the structuring of social arrangements of childrearing, is to be justified. Different distributional patterns of duties to care for children are evaluated in terms of the extent to which they achieve a satisfactory mutual adjustment of the legitimate interests of childrearing, children, and society.

11 See the discussion in George Keeton, *The Law of Trusts* (London: Professional Books Limited, 1974), pp. 6-12.

12 So far from being inhospitable to children's rights, the trust model may actually be used to define them. This is how "Rights of Children: A Trust Model" analyzes the legal status of children. Its basic position is that "the corpus of the trust, which the trustee must protect and develop in the beneficiary's behalf, consists of the body of rights which are, or should be, ascribed to children." "Rights of Children," p. 672. For more on the idea of rights held in trust, see Joel Feinberg, "The Child's Right to an Open Future," in *Whose Child?* ed. by William Aiken and Hugh LaFollette (Totowa, N.J.: Littlefield, Adams & Co., 1980), pp. 124-153.

13 "Rights of Children" mentions another advantage of using the trust model to conceptualize parenting:

Under the trust model, a trust terminates when its purposes have been accomplished. Taking each right of the child individually, it is possible to emancipate a child in stages rather than in an abrupt and arbitrary fashion. As the child demonstrates the capacity to exercise a right himself, the underlying rationale for entrusting the exercise of that right to an adult—to protect the child from the consequences of his own imprudent decisions—is eliminated. Upon the demonstration of capacity, the relevant right should be withdrawn from the corpus of the trust and vested in the child whose reason has developed sufficiently for him to exercise the right prudently on his own behalf. "Rights of Children," pp. 674-75.

The self-limiting character of parental authority is another widely shared belief about parenting.

14 The right is natural in the sense that it is not mediated by social institutions.

15 In *In Re Gault*, 387 U.S. 1 (1967), the Supreme Court argued that the state's powers under *parens patriae* are limited by the requirements of due process. The Court did not find anything objectionable in the rehabilitative philosophy of the juvenile court. Since the state has traditionally sought to re-

habilitate rather than punish youthful offenders under the doctrine of *parens patriae*, the *Gault* court did not reach the questions posed in this paper.

16 John Rawls, *A Theory of Justice* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1971) p. 448.

17 It follows from these and previous remarks that it is possible to place substantial limits in state supervision of parental authority without invoking the notion of natural parental rights.

ETHICS IN CONTEXT

Paying a Murderer for Evidence

EDITORS' INTRODUCTION

On January 14, 1982, Clifford Robert Olson pleaded guilty in a Vancouver, British Columbia courtroom to the rape and slaughter of eleven boys and girls. Any such plea would be bound to receive extensive coverage, but Olson's was noted with even more interest than usual since it was entered in exchange for a promise by Canadian authorities that they would establish a \$90,000 trust fund for Olson's wife and son. Details of the story are recounted in the following article (with the above title) that originally appeared in *The Wall Street Journal*. Realizing that the Olson case posed important ethical issues for administrators, the editors of *Criminal Justice Ethics* invited two philosophers—Ronald Munson of the University of Missouri—St. Louis, and Kai Nielsen of the University of Calgary—and two criminal justice practitioners—Helman R. Brook, former Chief of the Appeals Bureau of the

Kings County (N.Y.) District Attorney's Office and currently Chief Law Assistant to the Presiding Judge of the Appellate Division (Second Department) of the New York State Supreme Court, and Robert J. Comiskey, a program analyst in the Justice Management Division of the United State Department of Justice—to assess the actions taken by the Canadian administrators. The editors' purpose was not to second-guess official conduct but to sort out, without the pressure of an immediate decision, the issues posed by an extortionate threat such as Olson's. Nor did the editors seek an even division of opinion among the writers: Invitations were extended without prior discussion of the case, and, as it happened, three of the authors defended the action taken while one disagreed with it. Their reasoning follows the reprinting of *The Wall Street Journal* story.

From The Wall Street Journal, January 27, 1982, p. 28.

By Alan Bayless

VANCOUVER—As perhaps the most depraved mass murderer in Canadian history, Clifford Robert Olson has been

Alan Bayless is The Wall Street Journal's correspondent in Vancouver.

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generating a lot of bad press recently. Olson was just convicted of the rape and slaughter of 11 boys and girls in British Columbia over the past year or so. Olson would probably be only a footnote in the international crime catalog except for the deal he struck with the Royal Canadian Mounted Police, which ensured his conviction and life sentence Jan. 14. Olson received \$90,000 (Canadian) for his wife and infant son in

return for evidence the Mounties needed to prove him guilty.

There's nothing new in rewarding informers, even criminals, for evidence used to convict others. But Canadian legal experts apparently can't find any precedent, anywhere, for an accused man negotiating a reward in exchange for evidence against himself.

The details of the case, and the resulting controversy, are worth noting be-